

REMARKS

Applicant has reviewed the Office Action dated September 20, 2001, and the references cited therewith.

Claims 1 and 15 are amended, claims 16-22 were canceled, and new claims 23-29 are added; as a result, claims 1-15 and 23-29 are now pending in this application.

Affirmation of Election

As previously elected by the applicant's attorney on September 14, 2001, Applicant elects to prosecute without traverse the invention of Group I, claims 1-15. Applicant hereby affirms this election and withdraws claims 16-22 from further consideration pursuant to 37 CFR § 1.142(b), but Applicant specifically reserves the right to file a divisional application at a later date to reintroduce these claims.

Rejection Under 35 U.S.C. § 101

In the Office Action, claims 1-15 were rejected under 35 U.S.C. 101, because, according to the Office Action, the claimed invention "is directed to non-statutory subject matter." Applicant respectfully submits that the amendments to claims 1 and 15 address the statements concerning statutory subject matter.

Reconsideration and allowance of claims 1-15 as statutory subject matter are respectfully requested.

Rejection Under 35 U.S.C. § 112

Claims 1-15 were rejected under 35 U.S.C. 112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention."

Applicant amended claims 1 and 15 to more clearly state the subject matter. It is believed that claims 1 and 15, as clarified, overcome the rejection.

Reconsideration and withdrawal of the rejection under 35 U.S.C. 112, second paragraph, are respectfully requested.

Rejections Under 35 U.S.C. § 102

In the Office Action, claims 1-5, 8 and 12 were rejected under 35 U.S.C. § 102(e) as being anticipated by Goedeke (U.S. Patent No. 6,167,312).

Applicant does not admit that the Goedeke patent is prior art to the present invention and reserves the right to swear behind this patent at a later date. Nonetheless, Applicant believes the claims of the present invention are distinguishable over this reference. Detailed responses to the rejections are provided as follows:

Claim 1

According to the rejection, Goedeke "discloses a telemetry system for implantable medical devices which meets the functional use recitations presented in the claims since the antenna can be positioned on the posterior surface of the torso." The rejection further states the "input and output of switch 32 are read to provide the communicative coupling."

Claim 1 was amended to better describe the recited subject matter. Applicant respectfully submits that Goedeke does not teach, among other things, a magnetically permeable core surrounded by a substantially planar telemetry coil for increasing the flux density therewithin and thereby allowing a smaller outer dimension of the telemetry coil necessary for communication with the implanted device.

Therefore, all of the elements of claim 1 are not found in the Goedeke patent. Reconsideration and allowance of claim 1 is respectfully solicited.

Claim 2-5, 8 and 12:

Claims 2-5, 8, and 12 were also rejected under 35 U.S.C. § 102(e) as being anticipated by Goedeke

Applicant repeats the arguments presented above for claim 1 in support of patentability of dependent claims 2-5, 8, and 12. In addition, Applicant respectfully submits claims 2-5, 8, and 12 are patentable limitations of patentable base claim 1.

Reconsideration and allowance of the rejected claims are respectfully requested.

Rejections Under 35 U.S.C. § 103

In the Office Action, claims 1-4, 7-12 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kung (U.S. Patent No. 6,212,430) in view of Villaseca et al. (U.S. Patent No. 6,169,925).

Claim 1:

Claim 1 was amended to better describe the recited subject matter. Insofar as the rejection is applied to the subject matter as clarified, Applicant respectfully submits that the Kung and Villaseca patents do not suggest or teach, among other things, a magnetically permeable core surrounded by a substantially planar telemetry coil, as recited by claim 1. Applicant therefore respectfully submits that the above-cited references fail to support a proper *prima facie* case of obviousness because the cited references fail to teach or suggest all of the elements of Applicant's invention.

Withdrawal of the rejection and reconsideration of the claim is respectfully solicited.

Claims 2-4, 7-12, and 14:

Dependent claims 2-4, 7-12, and 14 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over Kung (U.S. Patent No. 6,212,430) in view of Villaseca et al. (U.S. Patent No. 6,169,925).

Applicant repeats the arguments presented above for claim 1 in support of patentability of dependent claims 2-4, 7-12, and 14. Furthermore, Applicant respectfully submits claims 2-4, 7-12,

AMENDMENT AND RESPONSE

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and 14 as patentable limitations of patentable base claim 1.

New Claims

Applicant has added new claims 23 and 28, and additional dependent claims 24-27 and claim 29, respectively. Consideration and allowance of these claims is respectfully solicited.

Claim 15:

Applicant has amended claim 15. Consideration and allowance of this claim is respectfully solicited.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (603-888-7958) to facilitate prosecution of this application.

Please charge any fees deemed necessary to Deposit Account No. 19-0743.

Respectfully submitted,

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By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 20 day of March, 2002.

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